

IN THE MATTER OF	:	BEFORE THE
<b>DEBRA &amp; THOMAS McGINTY</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 04-51C

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### **DECISION AND ORDER**

On February 21, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Debra and Thomas McGinty, Petitioners, for a conditional use for a bed and breakfast inn in an R-ED (Residential – Environmental Development) Zoning District, filed pursuant to Section 131.N.8 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Thomas M. Meachum, Esquire, represented the Petitioners. Debra and Thomas McGinty appeared in support of the petition. No one appeared in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find the following facts:

1. The subject property, known as 3879 and 3899 College Avenue, is located in the 2<sup>nd</sup> Election District on the east side of College Avenue about 600 feet north of New Cut Road in Ellicott City, Maryland (the "Property"). The Property is referenced on Tax Map 25, Grid 14, as Parcel 48, Lots 1 and 2.
2. The Property consists of two lots – Lot 1, which is 6.95 acres, and Lot 2, which is 0.79

acres – totaling about 7.74 acres in area. The Property is irregular in shape and has about 484 feet of frontage on College Avenue. At its deepest point, the Property is about 800 feet deep.

The Property is improved with a large granite dwelling known as “Lilburn Mansion.” The house was built in 1857 and is listed on the Howard County Historic Sites Inventory as HO-353. The building is situated in the western portion of the Property about 102 feet from College Avenue and 183 feet from the north lot line. A swimming pool is located to the southeast of the mansion. To the south of the pool is a small cottage house situated about 90 feet from College Avenue. This cottage house is also listed on the Howard County Historic Sites Inventory as HO-355 and is known as “Lilburn-Balderstone’s Cottage.”

The Property has access to College Avenue via a driveway that begins at a point east of the cottage house. This driveway divides and runs (a) north to a loop driveway and paved parking area for five vehicles on the west side of the mansion house, and (b) east to a parking pad for one vehicle in front of the cottage. The western portion of the loop driveway in front of the mansion is less than 75 feet from College Avenue.

The topography of the Property consists of moderate to steep slopes. The mansion house sits at the top of a knoll; the eastern and southern portions of the Property slopes down steeply toward the east and are predominantly wooded with streams and wetlands. The area around the mansion is lawn with numerous mature trees. A 5-foot stone retaining wall is between the mansion and the cottage.

3. Vicinal properties include:

(a) To the north of the Property is a 1.8 acre, R-ED zoned lot improved with a single-family detached dwelling.

(b) To the south and east is Parcel 95, a 6.8 acre, R-ED zoned property on which is planned a subdivision of eleven single family detached building lots. South of Lot 2 and west of Lot 1 is Parcel 231, An R-ED zoned lot improved with a single-family detached dwelling located about 165 feet from the cottage house.

(c) To the west across College Avenue are several R-ED zoned properties improved with single-family detached dwellings. To the northwest is an HO-zoned property improved with the Greystone Townhouses.

4. The Petitioners propose to operate on the Property a four bedroom bed and breakfast inn. Lilburn Mansion will house two of the bedrooms and the cottage house will house two bedrooms. The Petitioners will reside in the mansion house and will operate the business from both buildings. There will be no non-resident employees. No new structures, vehicles, equipment, materials or outdoor lighting will be added. No public reception or restaurant facilities will be provided. The existing drives and parking areas will be used by the proposed bed and breakfast patrons.

5. The Property is served by public water and sewer facilities. The 2000 General Plan designates the Property as "Residential Area." College Avenue is a minor collector and a designated scenic road with two travel lanes within a 30-foot right-of-way. The posted speed limit is 25 mph. The sight distance from the existing driveway is 500 feet to the south and 100 feet to the north.

6. The Petitioners introduced an affidavit Granville Wehland (Exhibit 1), a neighbor who has lived across the street from the Property for 40 years, which states that for the past 40 years he has observed vehicles regularly using and parking along the circular driveway in front of the mansion.

7. The Petitioners also introduced portions of the Zoning Regulations from 1989 and 1993

that show that the 75-foot use setback from College Avenue did not exist until 1993 (Exhibits 2 and 3).

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B).**

A. General Plan: The Howard County General Plan designates the area in which the Property is located as “Residential Area.” The General Plan also encourages the adaptive use of historic resources within Ellicott City as a means of community revitalization and enhancement (see Chapter 5, Community Conservation and Enhancement, pp. 205-208). The building will continue to be primarily residential. The proposed four-bedroom bed and breakfast inn use is of relatively low intensity and will take place primarily indoors within the relatively large 7.74 acre site. No additions are proposed. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: The Petitioners have met their burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a bed and breakfast inn in the R-ED district:

1. Physical Conditions. The proposal consists of the operation of a bed and breakfast inn within the existing Lilburn Mansion and cottage house. The proposed use will be conducted by the

owners primarily within the existing buildings and consist of activities that are normally associated with a bed and breakfast inn. No new structures, vehicles, equipment, materials or outdoor lighting will be added. No public reception or restaurant facilities will be provided. The use therefore will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a bed and breakfast inn in an R-ED zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. No changes to the existing structures will be made. The buildings, pool and retaining wall are adequately separated by distance and screened by mature trees from the surrounding residential properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioners propose to provide six parking spaces, five along the loop driveway near the mansion and one in front of the cottage house. The parking spaces will be located at least 50 feet<sup>1</sup> from College Avenue and will be well screened by mature trees. No refuse areas are proposed. Consequently, parking areas and driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

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<sup>1</sup> The DPZ report notes that, while the parking and drives encroach upon the current 75-foot setback from College Avenue, it is "reasonable to presume" that these uses pre-existed the setback requirement and are therefore noncomplying under Section 128.B. The affidavit of Mr. Wehland proves the presumption. I recommend that, in the future DPZ should make the determination of whether a use is noncomplying in the first instance.

4. Safe Access. The existing driveways have provided safe access and adequate sight distance and will continue to do so, given the low intensity and residential nature of the proposed use, in compliance with Section 131.B.2.d.

**II. Specific Criteria for Bed and Breakfast Inns (Section 131.N.8).**

1. An historic structure is defined by the Zoning Regulations as a structure or cluster of structures situated within the County which, together with its appurtenances and environmental setting, have significant historic or architectural value, and have been so designated by resolution of the County Council. Section 103.A.72. Both Lilburn Mansion and Lilburn-Balderstone's Cottage have been listed by the Council on the County's Historic Sites Inventory. Consequently, the buildings are historic structures for the purposes of Section 131.N.8.a.

2. The Petitioners will manage the inn and reside in Lilburn Mansion.<sup>2</sup> The petition therefore complies with Section 131.N.8.b.

3. No public reception or restaurant facilities will be provided in accordance with Section 131.N.8.c.

4. No exterior alteration of the historic structures or site is proposed; therefore, Section 131.N.8.d does not apply.

5. No extension or enlargement of the principal historic structure is proposed; therefore, Section 131.N.8.e does not apply.

6. The Property is in the R-ED zone; therefore, Section 131.N.8.f does not apply.

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<sup>2</sup> The Board of Appeals has determined that one bed and breakfast conditional use is permitted in two historic structures on the same or combined lots as long as the managers of the inn occupy one of the historic structures. See letter dated May 9, 2005 attached to the Department of Planning and Zoning Technical Staff Report dated February 9, 2006.

**ORDER**

Based upon the foregoing, it is this **3<sup>rd</sup> day of April 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Debra and Thomas McGinty, Petitioners, for a conditional use for a bed and breakfast inn in an R-ED (Residential – Environmental Development) Zoning District is hereby **GRANTED**;

**Provided, however**, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

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Thomas P. Carbo

Date Mailed: \_\_\_\_\_

**Notice**: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.